

REFERENCE TITLE: **hazardous air pollutants; de minimis**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1356

Introduced by
Senator Allen

AN ACT

AMENDING SECTIONS 49-426.06 AND 49-480.04, ARIZONA REVISED STATUTES; RELATING TO AIR QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 49-426.06, Arizona Revised Statutes, is amended to
3 read:

4 49-426.06. State program for control of hazardous air
5 pollutants

6 A. After publication of the report prescribed by section 49-426.08,
7 subsection B, the director shall **ESTABLISH** by rule ~~establish~~ a state program
8 for the control of hazardous air pollutants that meets the requirements of
9 this section. The program established pursuant to this section shall apply
10 to the following sources:

11 1. Sources that emit or have the potential to emit with controls ten
12 tons per year or more of any hazardous air pollutant or twenty-five tons per
13 year or more of any combination of hazardous air pollutants.

14 2. Sources that are within a category designated pursuant to section
15 49-426.05 and that emit or have the potential to emit with controls one ton
16 per year or more of any hazardous air pollutant or two and one-half tons per
17 year of any combination of hazardous air pollutants.

18 B. After rules adopted pursuant to subsection A of this section become
19 effective pursuant to section 41-1032, a person shall not commence the
20 construction or modification of a source that is subject to this section
21 without first obtaining a permit or permit revision that complies with
22 section 49-426 and subsection C or D of this section. For purposes of
23 determining whether a change constitutes a modification, **THE FOLLOWING APPLY:**

24 1. The director shall **ESTABLISH** by rule ~~establish~~ appropriate de
25 minimis amounts for hazardous air pollutants ~~that are not federally listed~~
~~hazardous air pollutants. In establishing de minimis amounts, the director~~
~~shall consider any relevant guidelines or criteria promulgated by the~~
~~administrator.~~ DE MINIMIS AMOUNTS THAT ARE ESTABLISHED BY RULE SHALL MEET
26 THE FOLLOWING SCIENTIFIC CRITERIA:

27 (a) THERE IS SCIENTIFICALLY RELIABLE EVIDENCE ON THE HEALTH OR
28 ENVIRONMENTAL EFFECTS OF THE DE MINIMIS AMOUNT THAT IS ADEQUATE TO SUPPORT
29 THE DETERMINATION OF THE DE MINIMIS AMOUNT. THE DIRECTOR SHALL RELY ON
30 TECHNICAL PROTOCOLS THAT ARE APPROPRIATE FOR THE DEVELOPMENT OF DE MINIMIS
31 AMOUNTS AND SHALL BASE THE DE MINIMIS AMOUNTS ON CREDIBLE MEDICAL AND
32 TOXICOLOGICAL EVIDENCE THAT HAS BEEN SUBJECTED TO PEER REVIEW. EVIDENCE
33 SHALL BE CONSIDERED SCIENTIFICALLY RELIABLE ONLY IF IT DEMONSTRATES ADVERSE
34 EFFECTS TO HUMAN HEALTH OR ADVERSE ENVIRONMENTAL EFFECTS FROM AN AIR
35 POLLUTANT AT CONCENTRATIONS THAT ARE LIKELY TO OCCUR IN THE ENVIRONMENT AS A
36 RESULT OF EMISSIONS OF THE DE MINIMIS AMOUNT INTO THE AMBIENT AIR FROM
37 SOURCES THAT ARE SUBJECT TO THE HAZARDOUS AIR POLLUTANT PROGRAM PRESCRIBED BY
38 SUBSECTION A OF THIS SECTION.

1 (b) EMISSIONS, AMBIENT CONCENTRATIONS, BIOACCUMULATION OR DEPOSITION
2 OF THE DE MINIMIS AMOUNT RESULTS IN ADVERSE EFFECTS TO HUMAN HEALTH OR
3 ADVERSE ENVIRONMENTAL EFFECTS.

4 (c) AN ADEQUATE AND RELIABLE METHODOLOGY IS REASONABLY AVAILABLE FOR
5 QUANTIFYING THE POLLUTANT AT THE DE MINIMIS AMOUNT.

6 2. A physical change to a source or change in the method of operation
7 of a source is not a modification subject to this section if the change
8 satisfies any of the following conditions:

9 1. (a) The change complies with section 112(g)(1) of the clean air
10 act.

11 2. (b) The change, together with any other changes implemented or
12 planned by the source, qualifies the source for an alternative emission
13 limitation pursuant to section 112(i)(5) of the clean air act.

14 3. (c) The change is required under a standard imposed pursuant to
15 section 112(d) or 112(f) of the clean air act and the change is implemented
16 after the administrator promulgates the standard.

17 C. A permit or permit revision issued to a new or modified source that
18 is subject to the state hazardous air pollutant program under subsection A,
19 paragraph 1 of this section shall impose the maximum achievable control
20 technology for the new source or modification, unless the applicant
21 demonstrates pursuant to subsection D of this section that the imposition of
22 maximum achievable control technology is not necessary to avoid adverse
23 effects to human health or adverse environmental effects. A permit or permit
24 revision issued to a new or modified source that is subject to the state
25 hazardous air pollutant program under subsection A, paragraph 2 of this
26 section shall impose hazardous air pollutant reasonably available control
27 technology for the new source or modification, unless the applicant
28 demonstrates pursuant to subsection D of this section that the imposition of
29 hazardous air pollutant reasonably available control technology is not
30 necessary to avoid adverse effects to human health or adverse environmental
31 effects. When a reliable method of measuring emissions of a hazardous air
32 pollutant subject to this section is not available, the director shall not
33 require compliance with a numeric emission limit for the pollutant but shall
34 instead require compliance with a design, equipment, work practice or
35 operational standard, or a combination thereof. Standards imposed pursuant
36 to this subsection shall apply only to hazardous air pollutants emitted in
37 amounts exceeding the de minimis amounts established ~~by the administrator or~~
38 by the director pursuant to subsection B of this section. The director shall
39 not impose a standard under this subsection that would require the
40 application of measures that are incompatible with measures required under a
41 standard imposed pursuant to section 49-426.03, subsection B.

42 D. If the owner or operator of a new source or modification subject to
43 this section establishes that the imposition of maximum achievable control
44 technology or hazardous air pollutant reasonably available control technology
45 is not necessary to avoid adverse effects to human health or adverse

1 environmental effects by conducting a scientifically sound risk management
2 analysis and submitting the results to the director with the permit
3 application for the new source or modification, the director shall exempt the
4 source from the imposition of such technology. The risk management analysis
5 may take into account the following factors:

6 1. The estimated actual exposure of persons living in the airshed of
7 the source.

8 2. Available epidemiological or other health studies.

9 3. Risks presented by background concentrations of hazardous air
10 pollutants.

11 4. Uncertainties in risk assessment methodology or other health
12 assessment techniques.

13 5. Health or environmental consequences from efforts to reduce the
14 risk.

15 6. The technological and commercial availability of control methods
16 beyond those otherwise required for the source and the cost of such methods.

17 E. Where maximum achievable control technology or hazardous air
18 pollutant reasonably available control technology has been established in a
19 general permit for a defined class of sources pursuant to subsection C of
20 this section and section 49-426, subsection H, the owner or operator of a
21 source within that class may obtain a variance from the standard by complying
22 with subsection D of this section at the time the source applies to be
23 permitted under the general permit. If the owner or operator makes the
24 demonstration required by subsection D of this section and otherwise
25 qualifies for the general permit, the director ~~shall~~, in accordance with the
26 procedures established pursuant to section 49-426, **SHALL** approve the
27 application and issue a permit granting a variance from the specific
28 provisions of the general permit relating to the standard. Except as
29 otherwise modified by the variance, the general permit shall govern the
30 source.

31 F. If the clean air act has established provisions, including specific
32 schedules, for the regulation of source categories pursuant to section
33 112(e)(5) and 112(n) of the clean air act, those provisions and schedules
34 shall apply to the regulation of those source categories under subsection B
35 of this section.

36 G. For any category or subcategory of facilities licensed by the
37 nuclear regulatory commission, the director shall not adopt or enforce any
38 standard or limitation respecting emissions of radionuclides which is more
39 stringent than the standard or limitation adopted by the administrator
40 pursuant to section 112 of the clean air act.

41 H. For purposes of subsection A of this section, in determining
42 potential to emit, the director shall consider controls that are enforceable
43 under any federal law or regulation, state or local law or rule or that are
44 inherent in the design of the source.

1 I. In determining whether emissions from a source or modification
2 exceed the thresholds prescribed by subsection A or B of this section, the
3 director shall exclude particulate matter emissions that consist of natural
4 crustal material and THAT are produced either by natural forces, such as wind
5 or erosion, or by anthropogenic activities, such as agricultural operations,
6 excavation, blasting, drilling, handling, storage, earth moving, crushing,
7 grinding or traffic over paved or unpaved roads, or other similar
8 activities. Nothing in this subsection shall preclude the regulation of
9 emissions of crustal materials as particulate matter pursuant to other
10 sections of this chapter.

11 Sec. 2. Section 49-480.04, Arizona Revised Statutes, is amended to
12 read:

13 49-480.04. County program for control of hazardous air
14 pollutants

15 A. Within six months after the adoption of rules pursuant to section
16 49-426.06, subsection A, the board of supervisors shall ESTABLISH by rule
17 establish a county program for the control of hazardous air pollutants
18 meeting the requirements of this section. The program established pursuant
19 to this section shall apply to the following sources:

20 1. Sources that emit or have the potential to emit, with controls, ten
21 tons per year or more of any hazardous air pollutant or twenty-five tons per
22 year or more of any combination of hazardous air pollutants.

23 2. Sources that are within a category designated pursuant to section
24 49-426.05 and that emit or have the potential to emit, with controls, one ton
25 per year or more of any hazardous air pollutant or two and one-half tons per
26 year of any combination of hazardous air pollutants.

27 B. After the effective date of the rules adopted pursuant to
28 subsection A of this section, a person shall not commence the construction or
29 modification of a source that is subject to this section without first
30 obtaining a permit or permit revision meeting the requirements of section
31 49-480 and subsection C or D of this section. A physical change to a source
32 or change in the method of operation of a source is not a modification
33 subject to this section if the change satisfies any of the following
34 conditions:

35 1. The change complies with section 112(g)(1) of the clean air act.
36 2. The change, together with any other changes implemented or planned
37 by the source, qualifies the source for an alternative emission limitation
38 pursuant to section 112(i)(5) of the clean air act.

39 3. The change is required under a standard imposed pursuant to section
40 112(d) or 112(f) of the clean air act and the change is implemented after the
41 administrator promulgates the standard.

42 C. A permit issued to a new or modified source that is subject to the
43 county hazardous air pollutant program under subsection A, paragraph 1 of
44 this section shall impose the maximum achievable control technology for the
45 new source or modification, unless the applicant demonstrates pursuant to

1 subsection D of this section that the imposition of maximum achievable
2 control technology is not necessary to avoid adverse effects to human health
3 or adverse environmental effects. A permit or permit revision issued to a
4 new or modified source that is subject to the county hazardous air pollutant
5 program under subsection A, paragraph 2 of this section shall impose
6 hazardous air pollutant reasonably available control technology for the new
7 source or modification, unless the applicant demonstrates pursuant to
8 subsection D of this section that the imposition of hazardous air pollutant
9 reasonably available control technology is not necessary to avoid adverse
10 effects to human health or adverse environmental effects. When a reliable
11 method of measuring emissions of a hazardous air pollutant subject to this
12 section is not available, the control officer shall not require compliance
13 with a numeric emission limit for the pollutant but shall instead require
14 compliance with a design, equipment, work practice or operational standard,
15 or a combination thereof. Standards imposed pursuant to this subsection
16 shall apply only to hazardous air pollutants emitted in amounts exceeding the
17 de minimis amounts established ~~by the administrator or~~ by the director
18 pursuant to section 49-426.06, subsection B. The control officer shall not
19 impose a standard under this subsection that would require the application of
20 measures that are incompatible with measures required under a standard
21 imposed pursuant to section 49-480.03, subsection A.

22 D. If the owner or operator of a new source or modification subject to
23 this section establishes that the imposition of maximum achievable control
24 technology or hazardous air pollutant reasonably available control technology
25 is not necessary to avoid adverse effects to human health or adverse
26 environmental effects by conducting a scientifically sound risk management
27 analysis and submitting the results to the control officer with the permit
28 application for the new source or modification, the control officer shall
29 exempt the source from the imposition of such technology. The risk
30 management analysis may take into account the following factors:

31 1. The estimated actual exposure of persons living in the vicinity of
32 the source.

33 2. Available epidemiological or other health studies.

34 3. Risks presented by background concentrations of hazardous air
35 pollutants.

36 4. Uncertainties in risk assessment methodology or other health
37 assessment techniques.

38 5. Negative health or environmental consequences that would result
39 from efforts to reduce the risk.

40 6. The technological and commercial availability of control methods
41 beyond those otherwise required for the source and the cost of such methods.

42 E. If maximum achievable control technology or hazardous air pollutant
43 reasonably available control technology standard has been established in a
44 general permit for a defined class of sources pursuant to subsection C of
45 this section, ~~and sections~~ SECTION 49-480 and SECTION 49-426, subsection H,

1 the owner or operator of a source within that class may obtain a variance
2 from the standard by complying with subsection D of this section at the time
3 the source applies to be permitted under the general permit. If the owner or
4 operator makes the demonstration required by subsection D of this section and
5 otherwise qualifies for the general permit, the control officer ~~shall~~, in
6 accordance with the procedures established pursuant to sections 49-480 and
7 49-426, **SHALL** approve the application and issue a permit granting a variance
8 from the specific provisions of the general permit relating to the
9 standard. Except as otherwise modified by the variance, the general permit
10 shall govern the source.

11 F. If the clean air act has established provisions, including specific
12 schedules, for the regulation of source categories pursuant to section
13 112(e)(5) and 112(n) of the clean air act, those provisions and schedules
14 shall apply to the regulation of those source categories under subsection B
15 of this section.

16 G. For any category or subcategory of facilities licensed by the
17 nuclear regulatory commission, the control officer shall not adopt or enforce
18 any standard or limitation respecting emissions of radionuclides which is
19 more stringent than the standard or limitation adopted by the administrator
20 pursuant to section 112 of the clean air act.

21 H. Except as otherwise provided in subsection I of this section, the
22 program established pursuant to this section shall apply only to source
23 categories designated by the director pursuant to section 49-426.05,
24 subsection A and to hazardous air pollutants designated by the director
25 pursuant to section 49-426.03, subsection A and section 49-426.04.

26 I. When a new source that is within a category that has not been
27 designated pursuant to section 49-426.05, subsection A submits an application
28 for a permit pursuant to section 49-480, the control officer may suspend
29 action on the application pending the designation of the category by the
30 director pursuant to section 49-426.05, subsection A, if all of the following
31 conditions are satisfied:

32 1. The director makes the finding required by section 49-426.05,
33 subsection A for the category to which the source belongs.

34 2. The control officer provides notice of the director's finding and
35 the control officer's intent to suspend action on the application to the
36 applicant on or before the date that a completeness determination is due
37 under sections 49-480 and 49-426.

38 3. The applicant does not elect to comply with subsection C or D of
39 this section.

40 J. For purposes of subsection A of this section, in determining
41 potential to emit, the control officer shall consider controls that are
42 enforceable under any federal law or regulation, state or local law or rule
43 or that are inherent in the design of the source.

1 K. In determining whether emissions from a source or modification
2 exceed the thresholds prescribed by subsection A or B of this section, the
3 control officer shall exclude particulate matter emissions that consist of
4 natural crustal material and THAT are produced either by natural forces, such
5 as wind or erosion, or by anthropogenic activities, such as agricultural
6 operations, excavation, blasting, drilling, handling, storage, earth moving,
7 crushing or grinding of crustal materials and traffic over paved or unpaved
8 roads, or other similar activities. Nothing in this subsection shall
9 preclude the regulation of emissions of crustal materials as particulate
10 matter pursuant to other sections of this chapter.